

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 1

OPENING INSTRUCTIONS

MEMBERS OF THE JURY, WE ARE ABOUT TO BEGIN THE TRIAL OF THE CASE ABOUT WHICH YOU HAVE HEARD SOME DETAILS DURING THE PROCESS OF JURY SELECTION. BEFORE THE TRIAL BEGINS, HOWEVER, THERE ARE CERTAIN INSTRUCTIONS YOU SHOULD HAVE IN ORDER TO BETTER UNDERSTAND WHAT WILL BE PRESENTED BEFORE YOU AND HOW YOU SHOULD CONDUCT YOURSELF DURING THE TRIAL.

THE PARTY THAT BRINGS A LAWSUIT IS CALLED THE PLAINTIFF. IN THIS CASE, THE PLAINTIFFS IS ROBERT SHEREZ. THE DEFENDANTS IN THIS CASE ARE THE STATE OF HAWAII DEPARTMENT OF EDUCATION, PATRICIA HAMAMOTO, MEREDITH MAEDA, AND SARA GRONNER.

IT WILL BE YOUR DUTY TO DECIDE FROM THE EVIDENCE WHAT THE FACTS ARE. YOU, AND YOU ALONE, ARE THE JUDGES OF THE FACTS. YOU WILL HEAR THE EVIDENCE, DECIDE WHAT THE FACTS ARE, AND THEN APPLY THOSE FACTS TO THE LAW WHICH I WILL GIVE TO YOU. THAT IS HOW YOU WILL REACH YOUR VERDICT. IN DOING SO, YOU MUST FOLLOW THAT LAW WHETHER YOU AGREE WITH IT OR NOT. THE EVIDENCE WILL CONSIST OF THE TESTIMONY OF WITNESSES, DOCUMENTS, AND OTHER THINGS RECEIVED INTO EVIDENCE AS EXHIBITS AND ANY FACTS ON WHICH THE LAWYERS AGREE OR WHICH I MAY INSTRUCT YOU TO ACCEPT.

YOU SHOULD NOT TAKE ANYTHING I MAY SAY OR DO DURING THE TRIAL AS INDICATING WHAT I THINK OF THE EVIDENCE OR WHAT THE VERDICT SHOULD BE.

SINCE YOU WILL BE CALLED UPON TO DECIDE THE FACTS OF THIS

CASE, YOU SHOULD GIVE CAREFUL ATTENTION TO THE TESTIMONY AND EVIDENCE PRESENTED FOR YOUR CONSIDERATION. DURING THE TRIAL YOU SHOULD KEEP AN OPEN MIND AND SHOULD NOT FORM OR EXPRESS ANY OPINION ABOUT THE CASE ONE WAY OR THE OTHER UNTIL YOU HAVE HEARD ALL OF THE TESTIMONY AND EVIDENCE, THE CLOSING ARGUMENTS OF THE LAWYERS, AND MY INSTRUCTIONS TO YOU ON THE APPLICABLE LAW.

Introductory Civil Rights Instructions

To enforce civil rights guaranteed to United States citizens by the constitution, Congress has enacted a law, known as Section 1983, which provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory ... , subjects or causes to be subjected, any citizen of the United States ... or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law ... for redress....

AUTHORITY:

ADAPTED FROM DEVITT, BLACKMAR & WOLFF, FEDERAL JURY PRACTICE AND INSTRUCTIONS (4th ED. 1987), §70.01; AND MANUAL OF MODEL CIVIL JURY INSTRUCTIONS FOR THE NINTH CIRCUIT, 3rd EDITION, §1.01.

GIVEN AS REQUESTED \_\_\_\_\_

GIVEN AS MODIFIED \_\_\_\_\_

REFUSED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

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UNITED STATES DISTRICT COURT JUDGE

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 2

STATUTES INVOLVED - TITLE VII

THE PLAINTIFF, ROBERT SHEREZ HAS BROUGHT THIS LAWSUIT AGAINST THE CITY OF HONOLULU UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, OFTEN REFERRED TO AS TITLE VII, AND TITLE I OF THE CIVIL RIGHTS ACT OF 1991. TITLE VII MAKES IT UNLAWFUL FOR AN EMPLOYER TO DISCRIMINATE IN THE HIRING OF EMPLOYEES AND, TO RETALIATE AGAINST AN EMPLOYEE WHO OPPOSES DISCRIMINATORY PRACTICES, OR TO CONSTRUCTIVELY DISCHARGE AN EMPLOYEE.

AUTHORITY:

ADAPTED FROM DEVITT, BLACKMAR & WOLFF, FEDERAL JURY PRACTICE AND INSTRUCTIONS (4th ED. 1987), §106.01; TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, §703, 42 U.S.C. §2000e-2; 42 U.S.C. §2000e-3, TITLE I OF THE CIVIL RIGHTS ACT OF 1991, 42 U.S.C. §1981a

GIVEN AS REQUESTED \_\_\_\_\_

GIVEN AS MODIFIED \_\_\_\_\_

REFUSED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

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UNITED STATES DISTRICT COURT JUDGE

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 3

ROLE OF THE COURT IN ENFORCEMENT OF TITLE VII

THE UNITED STATES FEDERAL COURTS HAVE THE DUTY OF ENFORCING MANY OF THE LAWS AGAINST EMPLOYMENT DISCRIMINATION INCLUDING TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED ("TITLE VII").

An aggrieved person has the right to bring suit in the Federal court for redress, of violations of their civil rights.

AUTHORITY:

ADAPTED FROM TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED, 42 U.S.C. §2000e et seq.

GIVEN AS REQUESTED \_\_\_\_\_

GIVEN AS MODIFIED \_\_\_\_\_

REFUSED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

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UNITED STATES DISTRICT COURT JUDGE

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 4

STATEMENT OF PLAINTIFF EEOC'S CLAIMS

THE PLAINTIFF ROBERT SHEREZ HAS BROUGHT THIS LAWSUIT ON BEHALF OF HIMSELF AND OTHER AFRICAN-AMERICAN TEACHERS AGAINST THE STATE OF HAWAII DEPARTMENT OF EDUCATION.

THE PLAINTIFF CONTENDS THAT DEFENDANT ROYAL HAWAIIAN BAND, ET. AL. DISCRIMINATED AGAINST HIM BY DENYING HIM FULL-TIME EMPLOYMENT IN CERTAIN TUTORING POSITIONS BECAUSE HE IS AFRICAN-AMERICAN.

THE PLAINTIFF ALSO CLAIMS THAT DEFENDANT STATE OF HAWAII DEPARTMENT OF EDUCATION, ET. AL. RETALIATED AGAINST HIM FOR COMPLAINING ABOUT THE CIVIL RIGHTS VIOLATIONS.

THE PLAINTIFF ALSO CLAIMS THAT AS A RESULT OF THE RACIAL HARASSMENT AND RETALIATION THE CONDITIONS OF EMPLOYMENT WERE SO INTOLERABLE THE PLAINTIFF FELT FORCED TO EXPRESS HIS DISPLEASURE WITH HIS TREATMENT BY THE DEFENDANTS. PLEASE BE AWARE THAT A FORCED RESIGNATION IS CALLED A CONSTRUCTIVE DISCHARGE.

THE PLAINTIFF CLAIMS THE LAW ENTITLES HIM TO MONETARY AND EQUITABLE RELIEF TO MAKE HIM WHOLE. THE PLAINTIFF CLAIMS THAT HE IS ALSO ENTITLED TO RECOVER COMPENSATORY DAMAGES FOR THE PAIN AND SUFFERING HE ENDURED AND THAT, DUE TO THE DEFENDANT DENYING HIM WORK, THAT HE WAS "CONSTRUCTIVELY DISCHARGED" AND IS ENTITLED TO RECOVER BACK PAY, PLUS INTEREST, FROM THE DATE OF HIS CONSTRUCTIVE DISCHARGE.

THE PLAINTIFF FURTHER CLAIMS THAT THE INDIVIDUAL DEFENDANTS, PATRICIA HAMAMOTO, MEREDITH MAEDA, AND SARA GRONNER ACTED WITH MALICE OR RECKLESS INDIFFERENCE WHEN IT DISCRIMINATED AGAINST HIM IN RATING HIS EMPLOYMENT APPLICATION AND RETALIATED AGAINST HIM AND CONSTRUCTIVELY DISCHARGED HIM, AND THAT HE IS ENTITLED TO PUNITIVE DAMAGES.

THE PLAINTIFF ALSO SEEKS INJUNCTIVE RELIEF TO PROTECT THE PUBLIC INTEREST AND DETER FURTHER RACIAL DISCRIMINATION, HARASSMENT AND RETALIATION. THE INJUNCTIVE RELIEF SOUGHT WOULD INCLUDE A COURT-ORDERED PROHIBITION AGAINST RACIAL DISCRIMINATION AND RETALIATION IN EMPLOYMENT IN THE STATE OF HAWAII DEPARTMENT OF EDUCATION.

AUTHORITY:

ADAPTED FROM TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, 42 U.S.C. §2000e et seq.; CIVIL RIGHTS ACT OF 1991, 42 U.S.C. §1981(b); DEVITT, BLACKMAR & WOLFF, FEDERAL JURY PRACTICE AND INSTRUCTIONS (4TH ED. 1987), §106.07; ALBEMARLE PAPER CO. v. MOODY, 422 U.S. 405 (1975); MANUAL OF MODEL JURY INSTRUCTIONS FOR THE NINTH CIRCUIT, 3RD EDITION, §§7.01, 7.05; BELLO, DESMARAIS & HARRISON, MODEL JURY INSTRUCTIONS, EMPLOYMENT LITIGATION, §§107[1], 107[3], 107[4].

GIVEN AS REQUESTED \_\_\_\_\_

GIVEN AS MODIFIED \_\_\_\_\_

REFUSED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

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UNITED STATES DISTRICT COURT JUDGE

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 5

ORDER OF TRIAL

THE CASE WILL PROCEED IN THE FOLLOWING ORDER:

FIRST, THE PLAINTIFF MAY MAKE AN OPENING STATEMENT OUTLINING HIS CASE. THE DEFENDANTS MAY ALSO MAKE AN OPENING STATEMENT OUTLINING THEIR CASE IMMEDIATELY AFTER THE PLAINTIFFS' STATEMENT, OR THEY MAY WAIT TO MAKE AN OPENING STATEMENT UNTIL THE CONCLUSION OF THE PLAINTIFFS' CASE. NEITHER PARTY IS REQUIRED TO MAKE AN OPENING STATEMENT. WHAT IS SAID IN OPENING STATEMENT IS NOT EVIDENCE, BUT IS SIMPLY DESIGNED TO PROVIDE YOU WITH AN INTRODUCTION TO THE EVIDENCE WHICH THE PARTY MAKING THE STATEMENT INTENDS TO PRODUCE.

SECOND, THE PLAINTIFF WILL INTRODUCE EVIDENCE IN SUPPORT OF HIS CLAIMS. AT THE CONCLUSION OF THE PLAINTIFFS' CASE, THE DEFENDANTS MAY INTRODUCE EVIDENCE. THE DEFENDANTS, HOWEVER, ARE NOT OBLIGED TO INTRODUCE ANY EVIDENCE OR TO CALL ANY WITNESSES. IF THE DEFENDANTS INTRODUCE EVIDENCE, THE PLAINTIFFS MAY THEN INTRODUCE REBUTTAL EVIDENCE.

THIRD, THE PARTIES MAY PRESENT CLOSING ARGUMENTS TO YOU AS TO WHAT THEY CONSIDER THE EVIDENCE HAS SHOWN AND AS TO THE INFERENCES WHICH THEY CONTEND YOU SHOULD DRAW FROM THE EVIDENCE. WHAT IS SAID IN CLOSING ARGUMENT, JUST AS WHAT IS SAID IN OPENING STATEMENT, IS NOT EVIDENCE. THE ARGUMENTS ARE DESIGNED TO PRESENT TO YOU THE CONTENTIONS OF THE PARTIES BASED ON THE EVIDENCE INTRODUCED. THE PLAINTIFFS HAVE THE RIGHT TO OPEN AND

TO CLOSE THE ARGUMENT.

FOURTH, I WILL INSTRUCT YOU ON THE LAW WHICH YOU ARE TO  
APPLY IN REACHING YOUR VERDICT.

AUTHORITY:

DEVITT, BLACKMAR & WOLFF, FEDERAL JURY PRACTICE AND INSTRUCTIONS  
(4th ED. 1987), \$70.02.

GIVEN AS REQUESTED \_\_\_\_\_

GIVEN AS MODIFIED \_\_\_\_\_

REFUSED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

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UNITED STATES DISTRICT COURT JUDGE

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 6

EVIDENCE IN THE CASE

THE EVIDENCE IN THE CASE WILL CONSIST OF THE SWORN TESTIMONY OF THE WITNESSES, REGARDLESS OF WHO MAY HAVE CALLED THEM; AND ALL EXHIBITS RECEIVED IN EVIDENCE, REGARDLESS OF WHO MAY HAVE PRODUCED THEM; AND ALL FACTS WHICH MAY HAVE BEEN JUDICIALLY NOTICED, AND WHICH I INSTRUCT YOU TO TAKE AS TRUE FOR THE PURPOSES OF THE CASE.

DEPOSITIONS MAY ALSO BE RECEIVED IN EVIDENCE. DEPOSITIONS CONTAIN SWORN TESTIMONY, WITH COUNSEL FOR EACH PARTY BEING ENTITLED TO ASK QUESTIONS. TESTIMONY PRODUCED IN A DEPOSITION MAY BE READ TO YOU IN OPEN COURT. DEPOSITION TESTIMONY MAY BE ACCEPTED BY YOU, SUBJECT TO THE SAME INSTRUCTIONS WHICH APPLY TO WITNESSES TESTIFYING IN OPEN COURT.

STATEMENTS AND ARGUMENTS OF COUNSEL ARE NOT EVIDENCE IN THE CASE, UNLESS MADE AS AN ADMISSION OR STIPULATION OF FACT. WHEN THE ATTORNEYS ON BOTH SIDES STIPULATE OR AGREE TO THE EXISTENCE OF A FACT YOU MUST, UNLESS OTHERWISE INSTRUCTED, ACCEPT THE STIPULATION AS EVIDENCE, AND REGARD THAT FACT AS PROVED.

THE COURT MAY TAKE JUDICIAL NOTICE OF CERTAIN FACTS OR EVENTS. WHEN THE COURT DECLARES THAT IT WILL TAKE JUDICIAL NOTICE OF SOME FACT OR EVENT, YOU MUST ACCEPT THAT FACT AS TRUE.

ANYTHING YOU MAY HAVE SEEN OR HEARD OUTSIDE THE COURTROOM IS NOT EVIDENCE, AND MUST BE ENTIRELY DISREGARDED.

AT THE END OF THE TRIAL, YOU WILL HAVE TO MAKE YOUR DECISION

BASED ON WHAT YOU RECALL OF THE EVIDENCE. YOU WILL NOT HAVE A WRITTEN TRANSCRIPT TO CONSULT, AND IT IS DIFFICULT AND TIME CONSUMING FOR THE REPORTER TO READ BACK LENGTHY TESTIMONY. I URGE YOU TO PAY CLOSE ATTENTION TO THE TESTIMONY AS IT IS GIVEN.

AUTHORITY:

ADAPTED FROM DEVITT, BLACKMAR & WOLFF, FEDERAL JURY PRACTICE AND INSTRUCTIONS (4th ED. 1987), §70.03.

GIVEN AS REQUESTED \_\_\_\_\_

GIVEN AS MODIFIED \_\_\_\_\_

REFUSED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

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UNITED STATES DISTRICT COURT JUDGE

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 7

INFERENCES DEFINED

YOU ARE TO CONSIDER ONLY THE EVIDENCE IN THE CASE. HOWEVER, IN YOUR CONSIDERATION OF THE EVIDENCE YOU ARE NOT LIMITED TO THE BALD STATEMENTS OF THE WITNESSES. IN OTHER WORDS YOU ARE NOT LIMITED TO WHAT YOU SEE AND HEAR AS THE WITNESSES TESTIFY. YOU ARE PERMITTED TO DRAW, FROM FACTS WHICH YOU FIND HAVE BEEN PROVED, SUCH REASONABLE INFERENCES AS SEEM JUSTIFIED IN THE LIGHT OF YOUR EXPERIENCE.

INFERENCES ARE DEDUCTIONS OR CONCLUSIONS WHICH REASON AND COMMON SENSE LEAD YOU TO DRAW FROM FACTS WHICH HAVE BEEN ESTABLISHED BY EVIDENCE IN THE CASE.

AUTHORITY:

ADAPTED FROM DEVITT, BLACKMAR & WOLFF, FEDERAL JURY PRACTICE AND INSTRUCTIONS (4th ED. 1987), §72.04.

GIVEN AS REQUESTED \_\_\_\_\_

GIVEN AS MODIFIED \_\_\_\_\_

REFUSED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

UNITED STATES DISTRICT COURT JUDGE

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 8

COURT'S QUESTIONS TO WITNESSES

DURING THE COURSE OF A TRIAL, I MAY OCCASIONALLY ASK QUESTIONS OF A WITNESS, IN ORDER TO BRING OUT FACTS NOT THEN FULLY COVERED IN THE TESTIMONY. PLEASE DO NOT ASSUME THAT I HOLD ANY OPINION ON THE MATTERS TO WHICH MY QUESTIONS MAY HAVE RELATED. REMEMBER THAT YOU, AS JURORS, ARE AT LIBERTY TO DISREGARD ALL COMMENTS OF THE COURT IN ARRIVING AT YOUR OWN FINDINGS AS TO THE FACTS.

AUTHORITY:

DEVITT, BLACKMAR & WOLFF, FEDERAL JURY PRACTICE AND INSTRUCTIONS  
(4th ED. 1987), §70.13.

GIVEN AS REQUESTED \_\_\_\_\_

GIVEN AS MODIFIED \_\_\_\_\_

REFUSED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

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UNITED STATES DISTRICT COURT JUDGE

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 9

WHAT IS NOT EVIDENCE

THE FOLLOWING THINGS ARE NOT EVIDENCE, AND YOU MUST NOT  
CONSIDER THEM AS EVIDENCE IN DECIDING THE FACTS OF THIS CASE:

1. STATEMENTS AND ARGUMENTS OF THE ATTORNEYS;
2. QUESTIONS AND OBJECTIONS OF THE ATTORNEYS;
3. TESTIMONY THAT I INSTRUCT YOU TO DISREGARD;
4. ANYTHING YOU MAY SEE OR HEAR WHEN THE COURT IS NOT IN  
SESSION EVEN IF WHAT YOU SEE OR HEAR IS DONE OR SAID BY  
ONE OF THE PARTIES OR BY ONE OF THE WITNESSES.

AUTHORITY:

MANUAL OF MODEL CIVIL JURY INSTRUCTIONS FOR THE NINTH CIRCUIT,  
3rd EDITION, §1.03.

GIVEN AS REQUESTED \_\_\_\_\_

GIVEN AS MODIFIED \_\_\_\_\_

REFUSED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

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UNITED STATES DISTRICT COURT JUDGE

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 10

EVIDENCE FOR LIMITED PURPOSE

SOME EVIDENCE IS ADMITTED FOR A LIMITED PURPOSE ONLY. WHEN I INSTRUCT YOU THAT AN ITEM OF EVIDENCE HAS BEEN ADMITTED FOR A LIMITED PURPOSE, YOU MUST CONSIDER IT ONLY FOR THAT LIMITED PURPOSE AND FOR NO OTHER.

AUTHORITY:

MANUAL OF MODEL CIVIL JURY INSTRUCTIONS FOR THE NINTH CIRCUIT,  
3rd EDITION, §1.04.

GIVEN AS REQUESTED \_\_\_\_\_

GIVEN AS MODIFIED \_\_\_\_\_

REFUSED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

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UNITED STATES DISTRICT COURT JUDGE

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 11

DIRECT AND CIRCUMSTANTIAL EVIDENCE

EVIDENCE MAY BE DIRECT OR CIRCUMSTANTIAL. DIRECT EVIDENCE IS DIRECT PROOF OF A FACT, SUCH AS TESTIMONY BY A WITNESS ABOUT WHAT THAT WITNESS PERSONALLY SAW OR HEARD OR DID. CIRCUMSTANTIAL EVIDENCE IS PROOF OF ONE OR MORE FACTS FROM WHICH YOU COULD FIND ANOTHER FACT. YOU SHOULD CONSIDER BOTH KINDS OF EVIDENCE. THE LAW MAKES NO DISTINCTION BETWEEN THE WEIGHT TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE. IT IS FOR YOU TO DECIDE HOW MUCH WEIGHT TO GIVE TO ANY EVIDENCE.

AUTHORITY:

MANUAL OF MODEL CIVIL JURY INSTRUCTIONS FOR THE NINTH CIRCUIT,  
3rd EDITION, §1.05.

GIVEN AS REQUESTED \_\_\_\_\_

GIVEN AS MODIFIED \_\_\_\_\_

REFUSED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

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UNITED STATES DISTRICT COURT JUDGE

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 12

RULING ON OBJECTIONS

THERE ARE RULES OF EVIDENCE WHICH CONTROL WHAT CAN BE RECEIVED INTO EVIDENCE. WHEN A LAWYER ASKS A QUESTION OR OFFERS AN EXHIBIT INTO EVIDENCE AND A LAWYER ON THE OTHER SIDE THINKS THAT IT IS NOT PERMITTED BY THE RULES OF EVIDENCE, THAT LAWYER MAY OBJECT. IF I OVERRULE THE OBJECTION, THE QUESTION MAY BE ANSWERED OR THE EXHIBIT RECEIVED. IF I SUSTAIN THE OBJECTION, THE QUESTION CANNOT BE ANSWERED, AND THE EXHIBIT CANNOT BE RECEIVED. WHENEVER I SUSTAIN AN OBJECTION TO A QUESTION, YOU MUST IGNORE THE QUESTION AND MUST NOT GUESS WHAT THE ANSWER MIGHT HAVE BEEN.

SOMETIMES I MAY ORDER THAT EVIDENCE BE STRICKEN FROM THE RECORD AND THAT YOU DISREGARD OR IGNORE THE EVIDENCE. THAT MEANS THAT WHEN YOU ARE DECIDING THE CASE, YOU MUST NOT CONSIDER THE EVIDENCE WHICH I TOLD YOU TO DISREGARD.

AUTHORITY:

MANUAL OF MODEL CIVIL JURY INSTRUCTIONS FOR THE NINTH CIRCUIT,  
3rd EDITION, §1.06.

GIVEN AS REQUESTED \_\_\_\_\_

GIVEN AS MODIFIED \_\_\_\_\_

REFUSED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

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UNITED STATES DISTRICT COURT JUDGE

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 13

CREDIBILITY OF WITNESSES

IN DECIDING THE FACTS IN THIS CASE, YOU MAY HAVE TO DECIDE WHICH TESTIMONY TO BELIEVE AND WHICH TESTIMONY NOT TO BELIEVE. YOU MAY BELIEVE EVERYTHING A WITNESS SAYS, OR PART OF IT, OR NONE OF IT.

IN CONSIDERING THE TESTIMONY OF ANY WITNESS, YOU MAY TAKE INTO ACCOUNT:

1. THE OPPORTUNITY AND ABILITY OF THE WITNESS TO SEE OR HEAR OR KNOW THE THINGS TESTIFIED TO;
2. THE WITNESS' MEMORY;
3. THE WITNESS' MANNER WHILE TESTIFYING;
4. THE WITNESS' INTEREST IN THE OUTCOME OF THE CASE AND ANY BIAS OR PREJUDICE;
5. WHETHER OTHER EVIDENCE CONTRADICTED THE WITNESS' TESTIMONY;
6. THE REASONABLENESS OF THE WITNESS' TESTIMONY IN LIGHT OF ALL THE EVIDENCE; AND
7. ANY OTHER FACTORS THAT BEAR ON BELIEVABILITY.

THE WEIGHT OF THE EVIDENCE AS TO A FACT DOES NOT NECESSARILY DEPEND ON THE NUMBER OF WITNESSES WHO TESTIFY.

AUTHORITY:

MANUAL OF MODEL CIVIL JURY INSTRUCTIONS FOR THE NINTH CIRCUIT,  
3rd EDITION, §1.07.

GIVEN AS REQUESTED \_\_\_\_\_

GIVEN AS MODIFIED \_\_\_\_\_

REFUSED \_\_\_\_\_

WITHDRAWN \_\_\_\_\_

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UNITED STATES DISTRICT COURT JUDGE

PLAINTIFF'S PROPOSED JURY INSTRUCTION NO. 14

BURDEN OF PROOF-PREPONDERANCE OF THE EVIDENCE

WHEN A PARTY HAS THE BURDEN OF PROOF ON ANY CLAIM BY A PREPONDERANCE OF THE EVIDENCE, IT MEANS YOU MUST BE PERSUADED BY THE EVIDENCE THAT THE CLAIM IS MORE PROBABLY TRUE THAN NOT TRUE.

YOU SHOULD BASE YOUR DECISION ON ALL OF THE EVIDENCE, REGARDLESS OF WHICH PARTY PRESENTED IT.